

6.0 APPLICABLE and POTENTIALLY APPLICABLE ENVIRONMENTAL LAWS, REGULATIONS, and PERMITS

The proposed SRS facility construction and operation would be required to comply with all applicable Federal, State of New Mexico, and local environmental laws, regulations, and permit requirements. Compliance with these requirements helps fulfill the national environmental policy objectives enumerated in Section 101(b) of NEPA. Table 56 summarizes the environmental laws and regulations that apply to the following environmental parameters:

- Cultural resources
- Air quality
- Water quality
- Hazardous waste
- Noise
- Wildlife, plant, and habitat protection
- Land use
- Water rights
- Airports/Airfields
- Spill control
- Occupational safety and health

Some requirements are discussed that would apply to the proposed SRS only under certain circumstances. Discussion of the applicability of these requirements to construction or operation of the proposed SRS is contained in Sections 2.0 and 4.0, beginning on pages 9 and 175, of this EIS.

Table 56. Summary of Applicable Laws, Regulations, and Permits

Title	Citation	Comments
CULTURAL RESOURCES		
FEDERAL		
<u>National Historic Preservation Act (NHPA)</u>	16 U.S.C. §470 et seq.	Enacted to protect the nation's cultural resources. Establishes the Advisory Council on Historic Preservation (ACHP), the State Historic Preservation Officers (SHPOs), and the National Register of Historic Places (NRHP). Section 106 directs Federal agencies to take into account the effects of their actions on properties included on or eligible for the NRHP. Section 110(f) requires specific planning and actions to minimize harm to any National Historic Landmarks that may be directly and adversely affected by a Federal agency's actions.
• Protection of Historic and Cultural Properties	36 CFR Part 800	<p>Delineates role of State Historic Preservation Officer (SHPO) in coordinating state (e.g., NM) participation in implementing the NHPA and Section “106 process” and responsibility of ACHP in commenting on agency (e.g., FAA) undertakings affecting historic properties. Describes participation in 106 process by agency officials (FAA), SHPO, ACHP, local governments, applicants for Federal licenses and approvals (e.g., NMOSC), Indian tribes, and the public.</p> <p>Section 106 process involves five steps:</p> <ol style="list-style-type: none"> 1. Identification of historic properties within area of proposed action's potential effects (literature/ records search and/or pedestrian survey). 2. Determination of effects of undertaking on historic properties 3. Consultation among Federal agency, SHPO, and others to seek ways to mitigate effects 4. Provision of opportunity for ACHP to comment on undertaking 5. Implementation of agency's decision-making process.
<u>American Indian Religious Freedom Act (AIRFA)</u>	42 U.S.C. §1996	States that it is the policy of the United States to protect and preserve the right of Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians) to believe, express, and exercise their traditional religions and ceremonial rites; requires consultation with potentially affected Native Americans if infringement by a proposed action is likely.
<u>Native American Graves Protection and Repatriation Act (NAGPRA)</u>	25 U.S.C. §3001 et seq.	Provides for the protection of Native American graves, human remains, and funerary objects; requires consultation with appropriate Indian tribe organization prior to intentional removal or excavation from tribal or Federal land; contains notification procedures for inadvertent discovery of remains or objects. Consultation with Mescalero Apaches would be required.
NEW MEXICO		

Table 56. (Continued)

Title	Citation	Comments
<u>Cultural Properties Act</u>	§§18-6-1 through 18-6-17 NMSA 1978	Provides for the preservation, protection, and enhancement of structures, sites, and objects of historical significance within New Mexico in a manner conforming with provisions of the NHPA. Establishes the Museum Division and Historic Preservation Division within the Office of Cultural Affairs. The SHPO, as Director of the Historic Preservation Division, staffs the Cultural Properties Review Committee, maintains the State Register of Cultural Properties, and reviews State undertakings to determine effects upon “significant” historic properties. With certain exceptions, information in the custody of a “public official” concerning the location of archaeological resources must remain confidential. A permit is required for excavation of archaeological sites.
AIR QUALITY		
FEDERAL		
<u>Clean Air Act (CAA)</u>	42 U.S.C. §7401 et seq.	<p>Evolved from the 1967 Air Quality Act, the Clean Air Act of 1970, and the CAA Amendments of 1977 to comprehensive revamping with the CAA Amendments of 1990. Implemented at the State level by the New Mexico Department of Environment (NMED)(see below). Provisions most applicable to proposed SRS:</p> <ul style="list-style-type: none"> • Establishes “primary” (public health) and “secondary” (public welfare) National Ambient Air Quality Standards for SO₂, NO_x, particulate matter (PM₁₀), CO, ozone, and lead (§109). • Requires states to submit to EPA a State Implementation Plan (SIP) for achieving and maintaining national air quality standards. A SIP must prohibit emissions which contribute to nonattainment of any national air quality standard or interfere with measures to prevent significant deterioration of air quality (§110). • Prohibits any Federal agency (e.g., FAA and BLM) from supporting “in any way” (e.g., providing a license, permit, or approval) any activity which does not conform to a SIP designed to attain national air quality standards [§176(c)]. • National Emission Standards for Hazardous Air Pollutants (NESHAP) (§112) would not apply to the SRS.
• National Primary and Secondary Ambient Air Quality Standards	40 CFR Part 50	National Ambient Air Quality Standards define criteria pollutant concentration levels intended to protect public health and welfare. When air quality of an area is “cleaner” than the national standard for a particular pollutant, it is in “attainment” for that pollutant. When the air quality is “dirtier” for a particular pollutant, the area is in “nonattainment” for that pollutant. The SRS is not proposed to be located in a nonattainment area for any air pollutant.

Table 56. (Continued)

Title	Citation	Comments
NEW MEXICO		
<u>Air Quality Control Act</u>	74-2-1 through 74-2-17 NMSA 1978	Generally, implements Federal CAA and State requirements. The NMED is the air pollution control agency while the Environmental Improvement Board (EIB) issues the regulations. Key definitions: <ul style="list-style-type: none"> • “air contaminant” includes any particulate matter, dust, fumes, gas, mist, smoke, and vapor (§74-2-2A) • “air pollution” means emission into outdoor atmosphere of one or more air contaminants in quantities and of duration that may with “reasonable probability” injure human health, animal or plant life, or interfere with public welfare, visibility, or reasonable use of property (§74-2-2B) • “nonattainment area” means an area so designated with respect to a particular air contaminant within the meaning of the Federal CAA (§74-2-2N)
• Oil Burning Equipment— Particulate Matter	20 NMAC 2.18	Establishes emission limitations for oil burning equipment (e.g., diesel-powered electrical generators) having a rated heat capacity greater than 250 million British Thermal Units (BTUs) per hour. Limits particulate emissions from equipment used to generate electrical power for on-site use only to 0.10 pounds per million BTU.
• Smoke and Visible Emissions	20 NMAC 2.61	Establishes opacity limitations for stationary combustion equipment and diesel-powered vehicles. Stationary combustion equipment (e.g., diesel-electrical generators) cannot have visible emissions equal to or exceeding an opacity of 20 percent. A diesel-powered vehicle operating below 8,000 feet elevation is limited to emissions of less than 30 percent opacity.
• Operating Permit	20 NMAC 2.70	An operating permit applies to a “major stationary source” of air pollutants which emits 100 or more tons per year of any air pollutant. This does not apply to either the construction or operation of the proposed SRS.
• Construction Permit	20 NMAC 2.72	This applies to construction of a stationary source with potential emission rates of 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or a New Mexico Ambient Air Quality Standard. Although the proposed cryogenic fuel plant would emit an estimated 14.6 tons per year of nitrous oxides, this is far below the level required for a construction permit. Carbon dioxide emissions are not regulated.
• Prevention of Significant Deterioration (PSD) Permit	20 NMAC 2.74	The proposed SRS would not require a PSD permit because it would not qualify as a major stationary source that would emit a regulated pollutant in an attainment or nonclassified area.
WATER QUALITY		
FEDERAL		
<u>Clean Water Act (CWA)</u> <u>also Federal Water Pollution</u> <u>Control Act (FWPCA)</u>	33 U.S.C. §§1251 to 1387	Establishes a highly complex national strategy for restoring and maintaining the chemical, physical, and biological integrity of U.S. waters. Key provisions are §402 (National Pollutant Discharge Elimination System) and §311 which requires notification to the “appropriate” Federal or state agency of discharges of oil or hazardous substances “in such quantities as may be harmful.”

Table 56. (Continued)

Title	Citation	Comments
<ul style="list-style-type: none"> EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES) 	40 CFR Part 122	<p>The NPDES permit program in New Mexico is administered by EPA Region 6 and not by NMED. It requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States.” Key definitions:</p> <ul style="list-style-type: none"> “pollutant” includes, but is not limited to, solid waste, sewage sludge, chemical wastes, biological materials, heat, and industrial waste. “discharge” includes additions of pollutants to U.S. waters from collected or channeled surface runoff and discharges through pipes, sewers, or other conveyances which do not lead to a treatment works. Discharges of storm water are included (see 40 CFR §122.26 below). “point source” means any discernible, confined, and discrete conveyance including (but not limited to) any pipe, ditch, channel, tunnel, conduit, well, container, or rolling stock. “waters of the U.S.” include rivers, streams (including intermittent streams), mudflats, impoundments, and tributaries of such waters. (The definition is intentionally broad enough to cover surface water anywhere at any time, even if present only occasionally.) <p>Discharges into (not from) publicly owned treatment works (POTWs) and privately owned treatment works are exempt if they can meet effluent limitations.</p> <p>NPDES permit application requirements are specified in Part 122, Subpart B and permit conditions are contained in Part 122, Subpart C.</p> <p>An NPDES permit would be required for discharges of treated sewage effluent and effluent from washdown of space vehicles on the launch pad.</p>
<ul style="list-style-type: none"> Effluent Guidelines and Standards 	40 CFR Parts 400-699	Prescribes effluent limitations and guidelines for existing sources, standards of performance for new sources, and pretreatment standards for new and existing sources. There are both technology-based effluent limitations (CWA §301) and water quality-based effluent limitations (CWA §302).
<ul style="list-style-type: none"> Storm Water Discharges 	40 CFR §122.26	<p>The CWA 1987 amendments [§402(p)] require an NPDES permit for municipal and industrial storm-water discharges from five types of sources, only one of which potentially applies to the proposed SRS: discharges “associated with industrial activity.”</p> <p>“Industrial activity” discharges includes discharges from: industrial plant yards (e.g., the cryogenic fuel plant); access roads; rail lines; material handling sites; refuse sites; sites used for storage and maintenance of material handling equipment; shipping and receiving areas; manufacturing buildings; and storage areas. Excluded are areas separated from “industrial activities” such as office buildings and parking lots as long as drainage from excluded areas is not “mixed” with storm water drained from industrial areas.</p> <p>An NPDES storm-water discharge permit would be required for some proposed SRS activities and locations.</p>

Table 56. (Continued)

Title	Citation	Comments
<u>Safe Drinking Water Act (SDWA)</u>	42 U.S.C. §300f et seq.	Applies to public water supply systems. Provides for the establishment of maximum contaminant levels (MCLs) and monitoring for several parameters including organic and inorganic chemicals and radioactivity. Would apply to SRS domestic water supply.
• National Primary Drinking Water Regulations	40 CFR Part 141	
• National Interim Primary Drinking Water Regulations Implementation	40 CFR Part 142	
• National Secondary Drinking Water Regulations	40 CFR Part 143	
NEW MEXICO		
<u>Water Quality Act</u>	§§74-6-1 through 72-6-17 NMSA 1978	Outlines the overall strategy for regulating water quality in New Mexico and establishes a multi-agency Water Quality Control Commission as the State's water pollution control agency. Administrative and enforcement functions are carried out by NMED (or other agencies that may be delegated authority).
(Continued)		<p>Key definitions:</p> <ul style="list-style-type: none"> • “water contaminant” is a substance that, if discharged or spilled, could alter the physical, chemical, biological, or radiological qualities of water. • “water pollution” means introducing into water one or more water contaminants in such quantity and of such duration as may “with reasonable probability” injure human health, animal or plant life, or property or unreasonably interfere with the public welfare or use of property. • “water” means <i>all</i> water whether surface or subsurface, public or private (except private water that does not combine with other surface or subsurface water). • “source” means any building, structure, facility, or installation from which there is or may be a discharge of water contaminants directly or indirectly into water.

Table 56. (Continued)

Title	Citation	Comments
<ul style="list-style-type: none"> • Ground and Surface Water Quality Protection Regulations 	<p>New Mexico Administrative Code Title 20, Chapter 6, Part 2 (20 NMAC 6.2)</p>	<p>The regulations for both surface water and groundwater are divided into five subparts: I—General Provisions and Procedures; II—Surface Water Protection; III—Permitting and Ground Water Standards; IV—Prevention and Abatement of Water Pollution; and V—Underground Injection Control.</p> <p>Key definitions not covered above:</p> <ul style="list-style-type: none"> • “discharge plan” is a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into groundwater. • “effluent disposal well” means any well (with exceptions not applicable to the SRS) used for the disposal of fluids which could potentially cause water pollution. • “groundwater” means any interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply. • “sewerage system” is a system of disposing of wastes by either surface or underground methods and includes sewer systems, disposal wells, and “other” systems (e.g., evaporation ponds).
<ul style="list-style-type: none"> • Notice of Intent to Discharge 	<p>20 NMAC 6.2.I.1201</p>	<p>Any person intending to make a new water contaminant discharge (unless the discharge is made to a sewer system intended to collect wastes for treatment or disposal) must file a notice with the NMED Ground Water Protection and Remediation Bureau if the discharge may affect groundwater and/or the Surface Water Quality Bureau if it may affect surface water.</p>
<ul style="list-style-type: none"> • Sewerage Systems 	<p>20 NMAC 6.2.I.1202</p>	<p>Any person proposing to construct a sewerage system must file construction plans and specifications with either or both the NMED Ground Water Protection and Remediation Bureau and the Surface Water Quality Bureau.</p>
<ul style="list-style-type: none"> • Notification of Discharge—Removal 	<p>20 NMAC 6.2.I.1203</p>	<p>This is known as the “spill” provision and is the State equivalent of §311 of the Federal CWA (see above). It applies to discharges of “oil or other water contaminant” in such a quantity as to pose a reasonable probability of injury to human health, animal or plant life, or property, or unreasonably interfere with the public welfare and use of property. Notice to the NMED Ground Water Protection and Remediation Bureau is to be made “as soon as possible” and no more than 24 hours after the discharge. The facility owner/operator must take corrective actions necessary to contain and remove or mitigate the damage caused by the discharge.</p>
<ul style="list-style-type: none"> • Surface Water Protection 	<p>20 NMAC 6.1.1102</p>	<p>Section 1102 of the New Mexico Standards for Interstate and Intrastate Streams established general standards which require that “watercourses” (defined in 20 NMAC 6.1 III 3100 to include arroyos, draws, and washes that have an “occasional” flow of water) be free of contaminants that would injure human health, animal or plant life, or property. These standards (oil and grease, nutrients, toxic substances, turbidity, etc.) to not apply to discharges from municipal separate storm sewers.</p>

Table 56. (Continued)

Title	Citation	Comments
	20 NMAC 6.1.3101.B	Section 3101 on Standards Applicable to Attainable or Designated Uses contains domestic water supply standards for 14 metals and radioactive constituents to protect against lifetime cancer risks. They would need to be attained by any domestic water supply system used at the proposed SRS.
	20 NMAC 6.2.II.2100 through 2102	These regulations pertain to discharges of effluent to a watercourse (river, creek, arroyo, canyon, draw, wash, or other channel having visible evidence of “occasional” flow of water). They do not apply to any discharge which is subject to an NPDES permit (issued by EPA in New Mexico) unless the discharger is in violation of the NPDES permit conditions.
• Permitting and Ground Water Standards	20 NMAC 6.2.III.3101 through 3114	<p>The purpose of Subpart III is to control discharges onto or below the surface of the ground in order to protect groundwater which has an existing concentration of 10,000 mg/l or less total dissolved solids. Human health, domestic water supply, and irrigation use numerical standards (maximum allowable concentrations in mg/l) are provided for 47 chemical compounds, heavy metals, and pH. A “discharge plan” is required for any discharge of effluent or leachate that may move directly or indirectly into groundwater.</p> <p>Among 13 exemptions to filing a discharge plan are effluent constituents which are subject to “effective and enforceable effluent limitations” under an NPDES permit <i>if</i> the discharge occurs downstream of the “outfall” where NPDES effluent limitations are imposed and <i>unless</i> the NMED determines that the discharge may constitute a hazard to public health.</p> <p>(Note: If a discharge associated with the proposed SRS is <i>not</i> subject to an NPDES permit, it would be subject to the NMED discharge plan requirement. There are detailed requirements in the State regulations pertaining to discharge plan applications, approvals and renewals, monitoring, reporting, public notice, and public participation.)</p>
• Underground Injection Control (UIC)	20 NMAC 6.2, Subpart V	Would apply to treated sewage effluent or water treatment residues if proposed to be injected in one or more “effluent disposal” wells if the fluid injected had the potential to pollute groundwater. A “discharge plan” would be required (see above). However, no effluent disposal well would be approved if it allowed movement of fluids into groundwater having 10,000 mg/l or less total dissolved solids (unless the disposal was into a “designated aquifer”).
HAZARDOUS WASTE		
FEDERAL		
<u>Resource Conservation and Recovery Act (RCRA)</u>	42 U.S.C. §6901 et seq.	Designed to track hazardous waste from “cradle to grave” through requirements for generators, handlers, shippers, and transporters of hazardous waste, plus establishing standards for facilities which treat, store, dispose of, or recycle hazardous wastes.

Table 56. (Continued)

Title	Citation	Comments
• Identification and Listing of Hazardous Waste	40 CFR Part 261	Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators are contained in 40 CFR §261.5. A generator is “conditionally exempt” from full regulation under RCRA (and NMED regulations) if it generates no more than 100 kilograms of spill residue and contaminated soil and debris resulting from a spill of acutely hazardous waste per month. A small quantity generator may accumulate up to 1,000 kilograms of hazardous waste on site and must ensure that all hazardous waste generated will be sent to a RCRA-permitted treatment, storage, or disposal facility. The proposed SRS is expected to qualify as a small quantity generator.
• Standards Applicable to Generators of Hazardous Waste	40 CFR Parts 262 and 263	
• Standards Applicable to Transporters of Hazardous Waste	40 CFR Part 263	
• Standards for Treatment, Storage, and Disposal Facilities (TSDFs)	40 CFR Parts 264 and 265	
• Interim Standards for Owners & Operators of a New Hazardous Waste Land Disposal Facilities	40 CFR Part 267	
• Land Disposal Restrictions	40 CFR Part 268	
• EPA Administered Permit Program	40 CFR Part 270	
• Pollution Prevention Act	42 USC §§13101 through 13109	Declares it to be a national policy that pollution should be prevented to reduced at the source whenever feasible and that pollution that cannot be prevented should be recycled or treated in an environmentally safe manner. Disposal or other release into the environment should be employed “only as a last resort.” Authorizes the EPA to promote a “multi-media approach” to reducing pollution sources. “Source reduction” in §13106 refers to toxic chemical releases. The term is defined as any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released to the environment. Thus, the Act pertains to air and water contaminants as well as hazardous wastes.

Table 56. (Continued)

Title	Citation	Comments
NEW MEXICO		
<u>Hazardous Waste Act</u>	§§74-4-1 through 74-4-14 NMSA 1978	Except for certain provisions under the Federal Hazardous and Solid Waste Amendments of 1984 (HSWA), New Mexico has primary jurisdiction over hazardous waste regulated at the Federal level under RCRA (see above). The Act does not apply to activities or substances regulated under the CWA or the SDWA (or equivalent State laws and regulations where New Mexico has primary jurisdiction)(see above). The NMEIB can adopt regulations equivalent to but no more stringent than those adopted by the EPA under RCRA. The Act requires permits for hazardous waste generators, transporters, and owners/operators of treatment, storage, and disposal (TSD) facilities.
• Hazardous Waste Regulations	20 NMAC 4.1	With few exceptions, the NMED, Hazardous and Radioactive Materials Bureau regulations on hazardous waste incorporate by reference the Federal EPA regulations in 40 CFR Parts 260–270 (see above list of EPA regulations). Although quantities of hazardous wastes generated would be very small, the SRS would comply with the NMED and EPA regulations where applicable.
<u>Hazardous Chemical Information Act</u>	§§74-4E-1 through 74-4E-9 NMSA 1978	Provides authority for New Mexico to implement the Federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), Title III of CERCLA. “Hazardous chemical” means any hazardous, extremely hazardous substance, toxic chemical, or hazardous material as defined by CERCLA Title III. Creates a “State Emergency Response Commission”. Requires any “facility owner or operator” (including any State agency owner/operator) who is required by Title III to file a written notice or report to also notify the State Emergency Response Commission, including reports to the National Response Center of the release of a chemical substance at or above “reportable quantities.”
NOISE		
FEDERAL		
<u>Noise Control Act of 1972</u>	42 U.S.C. §4901 et seq.	Requires Federal agencies to comply with Federal, state, interstate, and local requirements with respect to control and abatement of environmental noise to the fullest extent consistent with their authority; Federal regulation deemed essential only for commercial noise sources requiring national uniformity of treatment (e.g., aircraft noise).
WILDLIFE, PLANT, AND HABITAT PROTECTION		
FEDERAL		

Table 56. (Continued)

Title	Citation	Comments
<u>Endangered Species Act (ESA)</u>	16 U.S.C. §1531 et seq.	Provides protection for endangered and threatened species of flora and fauna; requires a Federal agency to: <ul style="list-style-type: none"> • Obtain a scientific permit for the capture, killing, monitoring, or scientific studies involving endangered or threatened wildlife and plant species • Confer with the U.S. Fish and Wildlife Service (USFWS) on proposed species or proposed critical habitat • Consult with the USFWS on potential impacts to species or habitat • Prepare a biological assessment of the proposed action.
• Endangered and Threatened Wildlife and Plants	50 CFR Part 17	Contains Federally-listed species.
• Consultation Procedures	50 CFR Part 402	
<u>Migratory Bird Treaty Act</u>	16 U.S.C. §§703-712	Codifies conventions (treaties) between the United States, Great Britain (including Canada), Mexico, Japan, and the (former) U.S.S.R. for the protection of migratory birds and birds in danger of extinction and their environment. Except as permitted by regulations of the Department of Interior (USFWS), makes it unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, import, or export any migratory bird or any part, nest, or egg of any migratory bird. At least one court decision, which the U.S. Supreme Court refused to review, has held that the MBTA is not intended to include habitat modification or degradation in its prohibitions so that such activities would constitute a “taking.” (“Taking” cases brought under the Endangered Species Act have generally had the opposite result.)
<u>Bald and Golden Eagle Protection Act</u>	16 U.S.C. §§668-668d	Makes it unlawful to take (capture, kill, or destroy) molest, or disturb bald (American) and golden eagles or their nests or eggs anywhere in the United States without a permit. Golden eagles are abundant at the proposed SRS site and bald eagles are present in the Rio Grande Valley.
<u>Compliance with Floodplain/Wetlands Environmental Review Requirements</u>		Based on Executive Order (EO) 11988 on Floodplain Management and EO 11990 on Protection of Wetlands. Applies to all proposed actions in floodplains or wetlands where practical alternatives are still available. A floodplain/wetlands assessment is mandatory if the regulations apply. Mitigation measures must be undertaken to minimize potential harm and preserve floodplain values.
NEW MEXICO		

Table 56. (Continued)

Title	Citation	Comments
<u>Wildlife Conservation Act</u>	§§17-2-37 through 17-2-46 NMSA 1978	Provides that species of wildlife indigenous to the State that are found to be “endangered” or “threatened” will be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat. The terms “endangered” and “threatened” species includes those listed by the USFWS under the Federal Endangered Species Act if also listed by the State Game Commission. Empowers the Commission to develop a list of endangered or threatened species of wildlife (which includes any mammal, bird, reptile, amphibian, fish, mollusk or crustacean) and conduct a biennial review of all species listed. Three lists have been developed: E1 (Endangered Group 1), species whose prospects of survival are in jeopardy; E2 (Endangered Group 2), species whose prospects of survival are likely to become jeopardized in the near future; and S (Sensitive), species which have been singled out for special consideration, i.e., “candidate” species. The Act is implemented and enforced by the New Mexico Department of Game and Fish.
• Endangered and Protected Species Procedures for Actions on the Biennial Review: Continuing Listing, Upgrading, Downgrading Species	19 NMAC 33.3	Provides procedures under which the State Game Commission (New Mexico Department of Fish and Game) can continue listing wildlife species as endangered or threatened or can either upgrade or downgrade species between the endangered and threatened categories.
<u>Endangered Plants</u> (not named as an Act)	§75-6-1 NMSA 1978	“Endangered plant species” means any species whose prospects of survival within New Mexico are in jeopardy, or are likely to be in jeopardy in the foreseeable future. The State Department of Energy, Minerals, Minerals and Natural Resources, Forestry and Resource Conservation Division is responsible for developing plant species lists. Four lists have been developed: L1, species in danger of becoming extinct; L2, species considered to be “rare” due to restricted distribution or low numerical density; L3, species for which there is not sufficient information to either list or reject; and L4, species which may have been listed previously but which have since been rejected in interagency reviews.
LAND USE		
FEDERAL		
<u>Federal Land Policy and Management Act (FLPMA)</u>	43 U.S.C. §1701 et seq.	Ensures that (Federal) public land are managed in a manner that will protect the quality of the land; preserve the natural condition of certain land; provide food and habitat for fish, wildlife, and domestic animals; and provide for outdoor recreation and human occupancy.
(Continued)	43 U.S.C. §1701 et seq.	Requires permits for certain activities on Federal public land. Under §206, BLM land required for development and operation of the proposed SRS may be exchanged for State of New Mexico land located elsewhere in the State if the exchange is in the “public interest.” In making such a determination, the Secretary of the Interior must consider benefits to better Federal and management and needs of state (e.g., New Mexico) and local residents, including land needed for economic development.

Table 56. (Continued)

Title	Citation	Comments
• BLM Land Exchange Procedures	43 CFR Part 2202	Provides general procedures and specific requirements governing exchanges of BLM land. Included in the criteria used to determine whether exchanges are in the “public interest” are the need to attain “consolidation of land and/or interests in land . . . for more logical and efficient management and development” as well as “fulfillment of public needs.”
NEW MEXICO		
<u>State of New Mexico Constitution</u>	Article XX1, §11	Provides that the State of New Mexico “consents” to exchanges of land with the U.S. Government provided that the value of State land is determined by the value of the land plus the value of timber and mineral rights.
<u>Exchanges of Lands With United States</u>	§19-2-12 NMSA 1978	Authorizes the State Commissioner of Public Lands to enter into agreements with the Secretary of the Interior for the exchange of any State land in New Mexico for U.S. land of equal value. The Commissioner may at his/her discretion reserve title to all oil, gas, and other minerals in, under, or that may be produced from land conveyed to the U.S. (e.g., BLM).
SIERRA COUNTY		
<u>Interim Land Use Policy Plan</u>	Sierra County Ordinance No. 91-001	<p>Developed by the Sierra County Commission to “guide the use of public land and public resources in Sierra County and to protect the rights of private landowners.” Establishes as policy that Federal and state agencies inform local governments of “all pending actions” and coordinate with local communities in planning and implementation. Requires “all federal and State agencies to comply with County Land Use Policy Plan and coordinate with the County Commission in planning and managing federal and State lands.” Contains a declaration that “all natural resources decisions affecting Sierra County shall be guided by the principles of protecting private property rights, protecting local custom and culture, and maintaining traditional economic structures.” The Ordinance establishes policies on land disposition; water resources; agriculture, timber, and wood products; and cultural resources, recreation, wildlife, and wilderness.</p> <p>It is also a County policy that the general public, the State, and local communities be consulted about “all federal and state land adjustments” in Sierra County.</p> <p>It is the County policy to “protect agricultural land and promote the continuation of agricultural pursuits by protecting private property rights, relying on self-determination, and ensuring open market conditions.” Federal and State governments are not to “obstruct” agricultural opportunities.</p>
WATER RIGHTS		
NEW MEXICO		

Table 56. (Continued)

Title	Citation	Comments
	§§72-1-1 through 72-1-9 NMSA 1978 (water rights in general)	Surface and groundwater in New Mexico is subject to appropriation for beneficial use. All natural waters flowing in streams or watercourses (rivers, creeks, canyons, arroyos, draws, or washes) belong to the public (§72-1-1) and all underground streams, channels, artesian basins, reservoirs, and lakes are public waters (§72-12-1). Water appropriation is supervised by the State Engineer according to licenses issued by his office and rights adjudicated by the courts. A permit is needed from the State Engineer to appropriate water.
	§§72-5-1 through 72-5-39 NMSA 1978 (appropriation and use of surface water)	Any owners of a water right may lease all or any part of his/her water-use under the "Water-Use Leasing Act" (§§72-6-1 through 72-6-7 NMSA 1978).
	§§72-12-1 through 72-12-28 NMSA 1978 (appropriation and use of groundwater)	A license is required from the State Engineers to drill a water well from any underground source (§72-12-12).
SPILL CONTROL		
FEDERAL		
<u>Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)</u>	42 U.S.C. §9601 et seq.	CERCLA §103 (42 U.S.C. §9603) requires that any person in charge of a facility must immediately notify the National Response Center of the release of a hazardous substance when the release is in excess of "reportable quantities." A "release" is defined broadly as any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, dumping, or disposing into the environment [CERCLA §101(22)].
• Designation, Reportable Quantities, and Notification	40 CFR Part 302	Provides the regulations for reporting of releases. Table 302.4 contains a list of hazardous substances and reportable quantities. Any releases of any of the substances on this very long list above reportable quantities would apply to the proposed SRS.
NEW MEXICO		
<u>Hazardous Chemical Information Act</u>	§§74-4E-1 through 74-4E-9 NMSA 1978	See above listing under Hazardous Waste regarding requirements for notifying the State Emergency Response Commission of any release of a reportable quantity of a hazardous substance, in addition to the National Response Center.
SAFETY AND HEALTH		
FEDERAL		
OSHA General Industry Standards	29 CFR Part 1910	
OSHA Construction Standards	29 CFR Part 1926	
NEW MEXICO		

Table 56. (Continued)

Title		Citation	Comments
General Industry and Construction Standards		New Mexico Occupational Health and Safety Bureau	
AIRPORTS/AIRFIELDS			
FEDERAL			
<u>Federal Airport Act</u>	49 U.S.C. §1101 et seq.	Requires notice to the Federal Aviation Administration (FAA) of proposal to construct, establish, or activate an airport or aircraft landing and takeoff area. “Airport” includes heliport. Applies to proposed SRS airfield and helicopter landing area.	
• Notice of Construction, Alteration, Activation, and Deactivation of Airports	14 CFR Part 157	Contains the same notice requirements as the statute.	
APPLICABLE FAA ORDERS			
Order No.	Date	Title	Comments
1050.1D	12/05/86	Policies and Procedures for Considering Environmental Impacts	Provides detailed guidance for compliance with the National Environmental Policy Act. Currently being revised.
5050.44	10/08/85	Airport Environmental Handbook	Provides detailed guidance on NEPA compliance and the format and content of environmental assessments (EAs) and environmental impact statements (EISs).